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IN THE

Supreme Court of the United States

October Term, 1957

No. 967

CHARLES NOIA,

Petitioner,

—against—

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

EDWARD S. SILVER
District Attorney, Kings County
Attorney for Respondent

WILLIAM I. SIEGEL
Assistant District Attorney
of Counsel

INDEX

	PAGE
Statement	1
Record Facts	2
Questions Presented	4
Jurisdiction	5
Argument	6
Conclusion	15
The Petition Should Be Denied	15

Cases Cited

Dixon v. Duffy, 344 U. S. 143, 97 L. Ed. 153, 73 S. Ct. 193	12
Durley v. Mayo, 351 U. S. 277, 100 L. Ed. 1178, 76 S. Ct. 806	12
Edelbaum v. California, 344 U. S. 358, 97 L. Ed. 387, 73 S. Ct. 293	12, 14
Hedgebeth v. North Carolina, 334 U. S. 806	11
Howell v. United States, 172 F. 2d 213, cert. den. 337 U. S. 906	12
Loftus v. Illinois, 334 U. S. 804, 92 L. Ed. 1737, 68 S. Ct. 1212	6, 11
Mooney v. Holahan, 294 U. S. 103, 79 L. Ed. 791	6
People v. Rizzo, 246 N. Y. 334	13
Phyle v. Duffy, 334 U. S. 431, 92 L. Ed. 1494, 68 S. Ct. 1131, re-hearing den. 334 U. S. 862, 92 L. Ed. 1782, 68 S. Ct. 1526	11, 15

PAGE

Stembridge v. Georgia, 343 U. S. 541, 96 L. Ed. 1130, 72 S. Ct. 834 12

Woods v. Nierstheimer, 328 U. S. 210, 90 L. Ed. 1177, 66 S. Ct. 996 11

Young v. Ragen, 337 U. S. 235, 93 L. Ed. 1333 6

OTHER CITATIONS

Title 28, U. S. Code, Sections 1257 (3) and 2101 (c and d) 5

Code of Criminal Procedure, Section 517 ..... 6, 8

Code of Criminal Procedure, Section 519 7

Code of Criminal Procedure, Section 520 ..... 7, 8

Code of Criminal Procedure, Section 521 8

CONSTITUTIONAL PROVISIONS

U. S. Constitution, Fourteenth Amendment, Section 1 5

New York State Constitution, Article 1, Section 6 .. 5

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Statement

Petitioner seeks review of a final order of the Court of Appeals of the State of New York, rendered January 23, 1958, affirming an order of the Appellate Division, Second Judicial Department, which reversed an order made by the Hon. George J. Joyce, a County Judge of Kings County, on June 26, 1956. This order vacated a judgment of the County Court of Kings County dated March 2, 1942, which convicted petitioner of the crime of Murder in the First Degree and, pursuant to the jury's recommendation, sentenced him to life imprisonment.

Petitioner applied to the Hon. Stanley H. Fuld, Associate Judge of the Court of Appeals, for an order staying

all proceedings pending an application for certiorari to this Court. Judge Fuld on February 11, 1958, granted the application only to the point of ordering that for a period of thirty days from that day all proceedings on the part of the District Attorney of Kings County be stayed. The purpose of such stay was to prevent petitioner's imprisonment under the original judgment of conviction. The order fixed bail in the sum of $25,000, to enable petitioner to make application to a Justice of this Court for a further stay and for bail during the period of such stay, if granted.

The Hon. John M. Harlan, Associate Justice of this Court, on March 6, 1958, denied petitioner's application for the further stay and bail. Petitioner thereupon surrendered himself to the Department of Correction of the City of New York on or about March 21, 1958 and was recommitted to Auburn State Prison, Auburn, New York, where he is presently incarcerated.

Record Facts Material to the Questions Presented

Petitioner, Santo Caminito, and Frank Bonino were indicted by the Grand Jury of Kings County and charged with the crime of Murder in the First Degree for the shooting and killing of Murray Hammeroff during the commission of a robbery. They were jointly tried and convicted of that crime. On March 2, 1942, the Court, in conformity with a recommendation by the jury, sentenced all defendants to terms of imprisonment for their respective natural lives.

Petitioner Noia did not appeal from the judgment.

Caminito and Bonino did so appeal and the judgment was affirmed by the Appellate Division (265 App. Div. 960) and by the Court of Appeals (291 N. Y. 541).

Caminito thereafter made two motions for re-argument, which were denied by the Court of Appeals (297 N. Y. 882; 307 N. Y. 686).

The Supreme Court of the United States denied his petition for certiorari (Black and Douglas, *JJ.* dissenting) (348 U. S. 839). A petition for a writ of habeas corpus was dismissed by the United States District Court for the Northern District of New York (127 F. Supp. 689), which however, granted a certificate of probable cause for appeal. The United States Court of Appeals for the Second Circuit reversed the order of the District Court (222 F. 2d 698), whereupon the District Court made an order granting the writ and directing that Caminito be transferred by the Warden of Auburn Prison to the custody of the Commissioner of Correction of the City of New York "for such other and further proceedings as justice may require upon the indictment now pending against him in the County Court of Kings County for the crime of Murder in the First Degree". Caminito was subsequently admitted to bail on June 7, 1955 by the Hon. George J. Joyce, a County Judge of Kings County, and has since been at liberty.

After the Supreme Court of the United States denied the People's petition for certiorari to United States Court of Appeals, Joyce *J.* dismissed the indictment against him by an order of June 12, 1956 (19-24). This was one of the

orders reversed by the Appellate Division (4 App. Div. 2d 697). The order in effect reinstated the indictment.*

Despite the fact that petitioner Noia did not appeal from the judgment of conviction and did not, either with appellant Caminito or independently, initiate any proceedings in the Federal Courts addressed to the judgment of conviction, Joyce, *J.*, vacated the judgment of conviction as to him by the order of June 26, 1956 (25-30). This order was also reversed by the Appellate Division and the judgment was in effect reinstated. It is from the order of the Court of Appeals, affirming the order of the Appellate Division, that certiorari is sought.

Questions Presented

Petitioner contends:

(1) The Courts of the State of New York have inherent power outside the scope of, and in addition to, the writ of error coram nobis to vacate a judgment of conviction where due process has been violated in obtaining the judgment.

(2) A determination in a judicial proceeding, *concerning co-defendants*, that due process was violated in obtaining judgments of conviction against them inures to the benefit of petitioner; and the failure of the State to provide a means whereby he may avail himself of the determination of lack of due process with respect to his co-defendants itself violated due process with respect to him.

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* To complete this historical statement, it should be noted that the Court of Appeals (1 N. Y. 2d 752) granted Bonino's motion for re-argument of his appeal from the original judgment of conviction and directed a new trial upon the indictment. He too, like Caminito, is now at liberty under bail of $25,000.

It is claimed that the Fourteenth Amendment, Section 1 of the Constitution of the United States is applicable to these contentions. It is also claimed (we submit, obviously without merit in the assertion of a violation of Federal Constitutional rights) that the Constitution of the State of New York, Article 1, Section 6 is applicable to these contentions.

Basis of Jurisdiction

It is contended that this Court has jurisdiction of the petition for certiorari under Title 28, United States Code, Sections 1257(3) and 2101 (c and d), since the petition is one to review a final judgment of a State Court of last resort.

It is further contended that jurisdiction lies to entertain the petition because "the Court of Appeals of the State of New York has decided Federal questions of substance in a manner not in accordance with applicable decisions of this Court."

We are confident of our ability to demonstrate that jurisdiction is totally lacking because:

(1) The New York Court of Appeals decided the question before it upon an adequate basis of State law, and

(2) No Federal question was involved in the proceedings before the Court of Appeals of the State of New York and no Federal question is presented to this Court.

ARGUMENT

I.

The requirements of due process lay upon the States the obligation to provide a method of post-trial judicial review of judgments of conviction which deprive a person of his liberty without due process of law in violation of the Constitution of the United States. *Mooney* v. *Holahan*, 294 U. S. 103, 79 L. Ed. 791. But the choice of *method* for review lies within the power and prerogative of the States, the requirements of due process being satisfied if *any* adequate method of review is supplied by the States. *Mooney* v. *Holahan*, *supra*; *Loftus* v. *Illinois*, 334 U. S. 804, 92 L. Ed. 1737, 68 S. Ct. 1212; *Young* v. *Ragen*, 337 U. S. 235, 93 L. Ed. 1333. With respect to petitioner's contention of lack of due process in his conviction: *i.e.*, that it had been procured solely by the use of a coerced confession, the State of New York did provide for him such protection by way of an appeal from the judgment.

New York Code of Criminal Procedure, Section 517, provides:

> "§517. In what cases appeal may be taken by defendant.
>
> An appeal may be taken by the defendant as of right from a judgment on a conviction in a criminal action or proceeding as follows:
>
> 1. Where the judgment is of death, directly to the Court of Appeals.
>
> 2. Where the judgment is other than of death, in the City of New York, (a) to the appellate division

of the supreme court of the department in which the conviction was had, from a conviction by the supreme court or by the court of general sessions of the county of New York or a county court, or from a conviction by a court of special sessions; • • •;

3. • • •."

Section 519 of the Code of Criminal Procedure provides:

"§519. Appeal to court of appeals from intermediate appellate court.

Upon the determination of an appeal, other than from a judgment of death, taken as provided in section five hundred seventeen or five hundred eighteen, an appeal may be taken from such determination by any party aggrieved to the court of appeals in the following cases, provided such party obtains a certificate granting permission to appeal, as provided in section five hundred twenty:

1. From a judgment or order affirming or reversing a judgment of conviction, including an order granting a new trial,

2. • • •

3. • • •

4. • • •

5. • • •

6. • • •."

Code of Criminal Procedure, Section 520, provides:

"§520. Certificate required for appeal to court of appeals.

1. Where an appeal has been taken and has been decided by any appellate tribunal referred to in sec-

> tion five hundred seventeen, a further appeal to the court of appeals shall lie as hereinafter prescribed, but not otherwise. If a judge of the court of appeals or a justice of the appellate division of the supreme court of the department in which such conviction was had makes a certificate granting permission to appeal and certifying that a question of law is involved which ought to be reviewed by the court of appeals, then a further appeal on such question of law may be taken to the court of appeals.
>
> 2. * * *."

Code of Criminal Procedure, Section 521, provides:

> "§521. Appeal to be taken; when.
> An appeal from a judgment or order pursuant to section five hundred seventeen or five hundred eighteen must be taken within thirty days after the judgment was rendered or service of a copy of the order with notice of entry thereof, except that when a party takes an appeal to the court of appeals after obtaining a certificate pursuant to section five hundred twenty, such appeal shall be timely if the application for leave to appeal is made within such thirty days and if the notice of appeal is duly served and filed within fifteen days after the certificate is granted."

By the enactment of Code Crim. Pro. §517, the Legislature of the State of New York gave petitioner an *automatic* right of appeal to the Appellate Division, of which he could not be deprived save by his own laches in failing to observe the time limitations imposed by Section 521 of the Code. The further right of appeal to the Court of Appeals, although conditioned upon the granting of the permission provided for by §520, must be viewed as an additional right

of appeal which the Court of Appeals would not deny to an applicant rightfully entitled to present an arguable question of law to that Court. Absent such appeal, the judgment of conviction is a conclusive determination of guilt, properly and legally established.

Basic in the consideration of the problem raised by the instant petition is the fact that petitioner, of his own volition, did not avail himself of these rights of appeal from the original judgment of conviction.

No explanation is offered to this Court, and none has been offered to any of the State Courts, for petitioner's non-employment of these rights of appeal which have been so signally useful and valuable to his original co-defendants. It is, indeed, entirely within the realm of probability that his inaction was a tacit admission of guilt and an expression of satisfaction with his escape from the extreme penalty of death.

Instead, he sought to substitute a method of procedure which he conceived,—erroneously, as the event showed,—to fit the requirements of his case. The Court of Appeals determined, however, that within the laws of the State of New York, he had by his inaction forfeited the right to review the legality of his conviction and could not substitute therefor a remedy from within whose scope his case was excluded by State law. This is made patent and obvious by that portion of the opinion, per Fuld, *J.*, which dealt with his contentions:

> "With regard to the appeal taken by Noia, to which we now turn, the Appellate Division reversed the order of the Kings County Court vacating and setting aside the judgment of conviction against him.

As noted above, Noia did not appeal from the judgment of conviction, as had Caminito and Bonino, nor did he seek, as had Caminito, relief by way of habeas corpus in the federal courts. In fact, it was not until June of 1956, after this court had reversed the judgment against Bonino and after the Kings County Court had dismissed the indictment against Caminito, that Noia made the motion resulting in the order now before us. He maintains that he stands in the same position as Caminito and Bonino and that, despite his acceptance of the conviction and his failure to appeal from the judgment, the trial court has 'inherent power' to set aside its own judgment procured in violation of constitutional right.

Not having participated in the appeals prosecuted by his co-defendants, Noia is not entitled to the beneficial results that they obtained. Some years ago, we held that the nonappealing co-defendants of one whose conviction was reversed on appeal have 'no remedy * * * through the court'; the judgments recorded against them 'stand' and 'they must serve their sentences.' (People v. Rizzo, 246 N. Y. 334, 339). Their only recourse, the court observed, was to the Governor for executive clemency.

Nor does the revitalization of coram nobis in this state since 1943 (see Matter of Lyons v. Goldstein, 290 N. Y. 19) change that and afford Noia a remedy in the courts. We have already adverted to the fact that at the trial the defendant claimed that his confessions were procured through coercive methods. The court left that question to the jury and, when its finding proved adverse to his contention and a judgment of conviction was rendered against him, Noia could have had the issue reviewed and considered, as did his co-defendants, on appeal and in the subsequent proceedings. His failure to pursue the

usual and accepted appellate procedure to gain a review of the conviction does not entitle him later to utilize the present day counterpart of the extraordinary writ of error coram nobis. (See, e. g. People v. Sullivan, 3 N. Y. 2d 196, 198) And this is so even though the asserted error or irregularity relates to a violation of constitutional right. (See Davis v. United States, 121 F 2d 594, 596, cert. den. 353 U. S. 960; Howell v. United States, 172 F 2d 213, 215, cert. den. 337 U. S. 906). While the scope of coram nobis has been somewhat expanded beyond its original office (see, e. g., People v. Shaw, 1 N. Y. 2d 30; People v. Kronick, 308 N. Y. 866), it still remains an emergency measure employed for the purpose for which it was initially designed, of calling up facts unknown at the time of the judgment. The present, quite obviously, is not such a case."

In this posture of the case, we respectfully submit, this Court is now called upon to apply the rule from which it has never departed: that where the judgment or order of a State Court rests upon an adequate non-federal ground, this Court will not assume jurisdiction to review the action of the State Court. *Woods* v. *Nierstheimer*, 328 U. S. 210, 90 L. Ed. 1177, 66 S. Ct. 996; *Phyle* v. *Duffy*, 334 U. S. 431, 92 L. Ed. 1494, 68 S. Ct. 1131, re-hearing denied 334 U. S. 862, 92 L. Ed. 1782, 68 S. Ct. 1526; *Loftus* v. *Illinois*, *supra*.

So strong is the rule that it has been enforced even in cases where the opinion of the State Court and the record in the case leaves doubt whether or not it decided the matter upon an adequate state ground. *Hedgebeth* v. *North Carolina*, 334 U. S. 806, 92 L. Ed. 1739, 68 S. Ct. 1185. The rule is applied even in cases where, the highest Court of the State having delivered no opinion, it appears that

nevertheless its judgment *might* have rested upon a non-federal ground. *Stembridge* v. *Georgia*, 343 U. S. 541, 96 L. Ed. 1130, 72 S. Ct. 834; *Edelman* v. *California*, 344 U. S. 358, 97 L. Ed. 387, 73 S. Ct. 293; *Dixon* v. *Duffy*, 344 U. S. 143, 97 L. Ed. 153, 73 S. Ct. 193; *Durley* v. *Mayo*, 351 U. S. 277, 100 L. Ed. 1178, 76 S. Ct. 806.

In *Edelman* v. *California*, *supra*, the Court wrote:

> "It is clear that this Court is without power to decide whether constitutional rights have been violated when the Federal questions are not seasonably raised in accordance with the requirements of State law (citing cases). *Non-compliance with such local law can thus be an adequate State ground for a decision below.* * * *
>
> The denial of petitioner's motion, therefore, rested on an adequate State ground, *his choice of the wrong remedy under local law.* (citing cases.)" (Italics ours).

Here, as in *Edelman* petitioner is debarred from the relief he seeks by his own "choice of the wrong remedy under local law."

The requirements of accurate procedure are no less definite with respect to prosecutions in the Federal Court and efforts made there to escape the consequences of conviction. In *Howell* v. *United States*, 172 F. 2d 213, cert. den. 337 U. S. 906, the United States Court of Appeals for the Fourth Circuit, per Parker, *J.* wrote:

> "Furthermore, all of appellant's complaints relate to matters which, if based upon fact, should have been called to the attention of the Court at the trial and made the subject of timely appeal from the judg-

ment, not raised by habeas corpus or by a motion questioning collaterally the validity of the proceedings leading to conviction. It is elementary that neither habeas corpus nor motion in the nature of application for writ of error coram nobis can be availed of in lieu of writ of error or appeal, to correct errors committed in the course of a trial *even though such errors relate to constitutional rights.*" (Italics ours).

The petition stresses the claimed injustice of compelling Noia to remain imprisoned, despite the fact that his co-defendants Caminito and Bonino have thus far been relieved of the judgments against them. It does not add to the cogency of the argument that petitioner is pictured as "sitting out a life sentence". Whatever be the consequences of his inaction during the period in which Caminito and Bonino strove so fully in their own behalf, that inaction was dictated by his own choice and for his own reasons and motives. True it is, that the aim of the law is justice; but it is equally true that the law, for wise reasons of its own, dictates the means and methods of attaining justice. That the Court of Appeals of the State of New York is concerned with the discovery and application of justice need not be argued as a question for its high aims are demonstrated in its recorded decisions. Yet that Court specifically rejected the argument of injustice as not applicable to petitioner's case. At the same time it pointed out to him, as it had done in *People* v. *Rizzo*, 246 N. Y. 334, an avenue of relief (see opinion of Fuld, *J.*, Appendix to to Petition, p. 23).

In *Rizzo*, four defendants were jointly indicted, jointly convicted and jointly sentenced for the crime of Attempted

Robbery in the First Degree. Rizzo alone appealed and in the Court of Appeals the judgment of conviction was reversed and a new trial ordered. The Court wrote:

> "If he (Rizzo) were not guilty, neither were the other three. *As the others, however, did not appeal, there is no remedy for them through the court; their judgments stand, and they must serve their sentences.* This of course is a situation which must in all fairness be met in some way. Two of these men were guilty of the crime of carrying weapons, pistols, contrary to law, for which they could be convicted. Two of them, John Thomasello and Thomas Milo, had also been previously convicted, which may have had something to do with their neglect to appeal.* However, the law would fail in its function and its purpose if it permitted these three men whoever or whatever they are to serve a sentence for a crime which the courts subsequently found and declared had not been committed. We, therefore, suggest to the district attorney of Bronx County that he bring the cases of these three men to the attention of the Governor to be dealt with as to him seems proper in the light of this opinion." (Italics ours.)

We do not deem it to be of service to the Court to answer or analyze the cases which petitioner so profusely cites. They are obviously inapposite to the sole point of inquiry before the Court and equally obviously unavailing to petitioner in light of the repeated decisions of this Court which may be summarized in the relevant words of *Edelbaum* v. *California, supra*:

> "The denial of petitioner's motion, therefore, rested on an adequate State ground, his choice of the wrong remedy under local law."

In Conclusion

We respectfully submit:

Petitioner had available, but failed to avail himself of, that post-trial remedy by appeal for the alleged infractions of his Constitutional rights which due process requires. His failure to proceed in accordance with State law constitutes a proper ground for refusal of relief by the State Court. That Court's order, therefore, rested upon an adequate State ground and left "no Federal Constitutional question presented which is ripe for decision here." *Phyle* v. *Duffy, supra.*

II.

The petition should be denied.

Dated: Brooklyn, New York,
May 1958.

Respectfully submitted,

EDWARD S. SILVER
District Attorney, Kings County
Attorney for Respondent

WILLIAM I. SIEGEL
Assistant District Attorney
of Counsel